

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

MARCO ANTONIO ROMERO,

Petitioner,

v.

DOUGLAS DRETKE, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:05-CV-0058

**REPORT AND RECOMMENDATION TO DISMISS**  
**PETITION FOR A WRIT OF HABEAS CORPUS**

On February 22, 2005, petitioner filed with this Court a handwritten pleading entitled “Interlocutory Application” wherein he appeared to challenge his conviction for the felony offense of sexual assault. Petitioner, however, cited the Court to 28 U.S.C. § 2349(b) as the authority for his filing. This statute addresses appellate court jurisdiction over petitions to review certain reviewable orders of listed federal agencies and is not applicable to petitioner’s circumstances. It appeared, instead, that petitioner was seeking federal habeas corpus relief by his pleading and, consequently, this case was opened as a habeas corpus proceeding.

As the federal courts for the Northern District of Texas require petitioners to utilize a form petition adopted by the district, petitioner was ordered, on March 15, 2005, to submit an “Amended Petition.” Petitioner was warned that his failure to properly supplement by April 4, 2005, twenty (20) days from the date of the Order, would result in an immediate recommendation for the

dismissal of this case without further notice.

As of this date, petitioner has not filed an Amended Petition form and is in direct disregard of the Court's Order. Further, petitioner has not communicated with the Court with regard to this case. It is the opinion of the undersigned that petitioner has neglected his case to such an extent that it warrants dismissal.

### RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for a Writ of Habeas Corpus filed by petitioner MARCO ANTONIO ROMERO be DISMISSED for want of prosecution.

### INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 6th day of May 2005.

/s/ Clinton E. Averitte

CLINTON E. AVERITTE

UNITED STATES MAGISTRATE JUDGE

### **\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be

**filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed.** See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).